

AMENDED IN SENATE MARCH 15, 2005

**SENATE BILL**

**No. 128**

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**Introduced by Senator Ackerman**

***(Coauthors: Senators Battin, Cox, Denham, Margett, Morrow, and Poochigian)***

*(Coauthors: Assembly Members Bogh, Benoit, Chavez, Cogdill, DeVore, Haynes, Jerome Horton, Huff, La Suer, Maze, and Plescia)*

January 31, 2005

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An act to amend Section 186.22 of the Penal Code, relating to gangs.

LEGISLATIVE COUNSEL'S DIGEST

SB 128, as amended, Ackerman. Gangs.

Existing law, as amended by initiative, provides that any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or 2 or 3 years. Existing law also defines "pattern of criminal gang activity" to mean the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of 2 or more of the certain offenses, as specified. Existing law also authorizes the Legislature to amend these provisions with a  $\frac{2}{3}$  vote of each house of the Legislature.

This bill would add several offenses relating to theft of access cards and personal information to the list of offenses qualifying for a pattern of criminal gang activity.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 186.22 of the Penal Code is amended to  
2 read:

3 186.22. (a) Any person who actively participates in any  
4 criminal street gang with *the* knowledge that its members engage  
5 in or have engaged in a pattern of criminal gang activity, and  
6 who willfully promotes, furthers, or assists in any felonious  
7 criminal conduct by members of that gang, shall be punished by  
8 imprisonment in a county jail for a period not to exceed one year,  
9 or by imprisonment in the state prison for 16 months, or two or  
10 three years.

11 (b) (1) Except as provided in paragraphs (4) and (5), any  
12 person who is convicted of a felony committed for the benefit of,  
13 at the direction of, or in association with any criminal street gang,  
14 with the specific intent to promote, further, or assist in any  
15 criminal conduct by gang members, shall, upon conviction of that  
16 felony, in addition and consecutive to the punishment prescribed  
17 for the felony or attempted felony of which he or she has been  
18 convicted, be punished as follows:

19 (A) Except as provided in subparagraphs (B) and (C), the  
20 person shall be punished by an additional term of two, three, or  
21 four years at the court's discretion.

22 (B) If the felony is a serious felony, as defined in subdivision  
23 (c) of Section 1192.7, the person shall be punished by an  
24 additional term of five years.

25 (C) If the felony is a violent felony, as defined in subdivision  
26 (c) of Section 667.5, the person shall be punished by an  
27 additional term of 10 years.

28 (2) If the underlying felony described in paragraph (1) is  
29 committed on the grounds of, or within 1,000 feet of, a public or

1 private elementary, vocational, junior high, or high school,  
2 during hours in which the facility is open for classes or  
3 school-related programs or when minors are using the facility  
4 that fact shall be a circumstance in aggravation of the crime in  
5 imposing a term under paragraph (1).

6 (3) The court shall order the imposition of the middle term of  
7 the sentence enhancement, unless there are circumstances in  
8 aggravation or mitigation. The court shall state the reasons for its  
9 choice of sentencing enhancements on the record at the time of  
10 the sentencing.

11 (4) Any person who is convicted of a felony enumerated in  
12 this paragraph committed for the benefit of, at the direction of, or  
13 in association with any criminal street gang, with the specific  
14 intent to promote, further, or assist in any criminal conduct by  
15 gang members, shall, upon conviction of that felony, be  
16 sentenced to an indeterminate term of life imprisonment with a  
17 minimum term of the indeterminate sentence calculated as the  
18 greater of:

19 (A) The term determined by the court pursuant to Section  
20 1170 for the underlying conviction, including any enhancement  
21 applicable under Chapter 4.5 (commencing with Section 1170) of  
22 Title 7 of Part 2, or any period prescribed by Section 3046, if the  
23 felony is any of the offenses enumerated in subparagraphs (B) or  
24 (C) of this paragraph.

25 (B) Imprisonment in the state prison for 15 years, if the felony  
26 is a home invasion robbery, in violation of subparagraph (A) of  
27 paragraph (1) of subdivision (a) of Section 213; carjacking, as  
28 defined in Section 215; a felony violation of Section 246; or a  
29 violation of Section 12022.55.

30 (C) Imprisonment in the state prison for seven years, if the  
31 felony is extortion, as defined in Section 519; or threats to  
32 victims and witnesses, as defined in Section 136.1.

33 (5) Except as provided in paragraph (4), any person who  
34 violates this subdivision in the commission of a felony  
35 punishable by imprisonment in the state prison for life, shall not  
36 be paroled until a minimum of 15 calendar years have been  
37 served.

38 (c) If the court grants probation or suspends the execution of  
39 sentence imposed upon the defendant for a violation of  
40 subdivision (a), or in cases involving a true finding of the

1 enhancement enumerated in subdivision (b), the court shall  
2 require that the defendant serve a minimum of 180 days in a  
3 county jail as a condition thereof.

4 (d) Any person who is convicted of a public offense  
5 punishable as a felony or a misdemeanor, which is committed for  
6 the benefit of, at the direction of or in association with, any  
7 criminal street gang with the specific intent to promote, further,  
8 or assist in any criminal conduct by gang members, shall be  
9 punished by imprisonment in the county jail not to exceed one  
10 year, or by imprisonment in the state prison for one, two, or three  
11 years, provided that any person sentenced to imprisonment in the  
12 county jail shall be imprisoned for a period not to exceed one  
13 year, but not less than 180 days, and shall not be eligible for  
14 release upon completion of sentence, parole, or any other basis,  
15 until he or she has served 180 days. If the court grants probation  
16 or suspends the execution of sentence imposed upon the  
17 defendant, it shall require as a condition thereof that the  
18 defendant serve 180 days in a county jail.

19 (e) As used in this chapter, “pattern of criminal gang activity”  
20 means the commission of, attempted commission of, conspiracy  
21 to commit, or solicitation of, sustained juvenile petition for, or  
22 conviction of two or more of the following offenses, provided at  
23 least one of these offenses occurred after the effective date of this  
24 chapter and the last of those offenses occurred within three years  
25 after a prior offense, and the offenses were committed on  
26 separate occasions, or by two or more persons:

27 (1) Assault with a deadly weapon or by means of force likely  
28 to produce great bodily injury, as defined in Section 245.

29 (2) Robbery, as defined in Chapter 4 (commencing with  
30 Section 211) of Title 8 of Part 1.

31 (3) Unlawful homicide or manslaughter, as defined in Chapter  
32 1 (commencing with Section 187) of Title 8 of Part 1.

33 (4) The sale, possession for sale, transportation, manufacture,  
34 offer for sale, or offer to manufacture controlled substances as  
35 defined in Sections 11054, 11055, 11056, 11057, and 11058 of  
36 the Health and Safety Code.

37 (5) Shooting at an inhabited dwelling or occupied motor  
38 vehicle, as defined in Section 246.

- 1 (6) Discharging or permitting the discharge of a firearm from
- 2 a motor vehicle, as defined in subdivisions (a) and (b) of Section
- 3 12034.
- 4 (7) Arson, as defined in Chapter 1 (commencing with Section
- 5 450) of Title 13.
- 6 (8) The intimidation of witnesses and victims, as defined in
- 7 Section 136.1.
- 8 (9) Grand theft, as defined in subdivision (a) or (c) of Section
- 9 487.
- 10 (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- 11 (11) Burglary, as defined in Section 459.
- 12 (12) Rape, as defined in Section 261.
- 13 (13) Looting, as defined in Section 463.
- 14 (14) Money laundering, as defined in Section 186.10.
- 15 (15) Kidnapping, as defined in Section 207.
- 16 (16) Mayhem, as defined in Section 203.
- 17 (17) Aggravated mayhem, as defined in Section 205.
- 18 (18) Torture, as defined in Section 206.
- 19 (19) Felony extortion, as defined in Sections 518 and 520.
- 20 (20) Felony vandalism, as defined in paragraph (1) of
- 21 subdivision (b) of Section 594.
- 22 (21) Carjacking, as defined in Section 215.
- 23 (22) The sale, delivery, or transfer of a firearm, as defined in
- 24 Section 12072.
- 25 (23) Possession of a pistol, revolver, or other firearm capable
- 26 of being concealed upon the person in violation of paragraph (1)
- 27 of subdivision (a) of Section 12101.
- 28 (24) Threats to commit crimes resulting in death or great
- 29 bodily injury, as defined in Section 422.
- 30 (25) Theft and unlawful taking or driving of a vehicle, as
- 31 defined in Section 10851 of the Vehicle Code.
- 32 (26) Theft of access cards or account information, as defined
- 33 in Section 484e.
- 34 (27) Counterfeiting, designing, using, attempting to use an
- 35 access card, as defined in Section 484f.
- 36 (28) Fraudulent use of an access card or account information,
- 37 as defined in Section 484g.
- 38 (29) Wrongfully obtaining Department of Motor Vehicles
- 39 documentation, as defined in Section 529.7.

1 (30) Unauthorized use of personal identifying information to  
2 obtain credit, goods, services, or medical information in the name  
3 of another, as defined in Section 530.5.

4 (f) As used in this chapter, “criminal street gang” means any  
5 ongoing organization, association, or group of three or more  
6 persons, whether formal or informal, having as one of its primary  
7 activities the commission of one or more of the criminal acts  
8 enumerated in paragraphs (1) to—(25) (30), inclusive, of  
9 subdivision (e), having a common name or common identifying  
10 sign or symbol, and whose members individually or collectively  
11 engage in or have engaged in a pattern of criminal gang activity.

12 (g) Notwithstanding any other law, the court may strike the  
13 additional punishment for the enhancements provided in this  
14 section or refuse to impose the minimum jail sentence for  
15 misdemeanors in an unusual case where the interests of justice  
16 would best be served, if the court specifies on the record and  
17 enters into the minutes the circumstances indicating that the  
18 interests of justice would best be served by that disposition.

19 (h) Notwithstanding any other provision of law, for each  
20 person committed to the Youth Authority for a conviction  
21 pursuant to subdivision (a) or (b) of this section, the offense shall  
22 be deemed one for which the state shall pay the rate of 100  
23 percent of the per capita institutional cost of the Department of  
24 Youth Authority, pursuant to Section 912.5 of the Welfare and  
25 Institutions Code.

26 (i) In order to secure a conviction, or sustain a juvenile  
27 petition, pursuant to subdivision (a), it is not necessary for the  
28 prosecution to prove that the person devotes all, or a substantial  
29 part of his or her time or efforts to the criminal street gang, nor is  
30 it necessary to prove that the person is a member of the criminal  
31 street gang. Active participation in the criminal street gang is all  
32 that is required.

33 SEC. 2. No reimbursement is required by this act pursuant to  
34 Section 6 of Article XIII B of the California Constitution because  
35 the only costs that may be incurred by a local agency or school  
36 district will be incurred because this act creates a new crime or  
37 infraction, eliminates a crime or infraction, or changes the  
38 penalty for a crime or infraction, within the meaning of Section  
39 17556 of the Government Code, or changes the definition of a

1 crime within the meaning of Section 6 of Article XIII B of the  
2 California Constitution.

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5 **CORRECTIONS:**

6 **Page 2 vote key**

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